

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

3M COMPANY,)	COURT FILE
)	NO. 20-CV-1371 (ECT/KMM)
)	
Plaintiff,)	
vs.)	VIA ZoomGov
)	VIDEO CONFERENCE
LEGACY MEDICAL SUPPLIES, LLC;)	
MARK ECKHARDT; CAROL ANN KORPI;)	
JOSEPH NELSON; JEREMY REBOULET;)	
and DOES 1-10, <i>whose true names</i>)	
<i>are largely unknown,</i>)	
)	Tuesday, July 14, 2020
Defendants.)	St. Paul, Minnesota
)	1:00 P.M.

HEARING ON

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

and

PRELIMINARY INJUNCTION

BEFORE THE HONORABLE ERIC C. TOSTRUD
UNITED STATES DISTRICT JUDGE

TIMOTHY J. WILLETTE, RDR, CRR, CRC
Official Court Reporter - United States District Court
Warren E. Burger Federal Building & U.S. Courthouse
316 North Robert Street - Suite 146
St. Paul, Minnesota 55101
651.848.1224

A P P E A R A N C E S:**For the Plaintiff:****MASLON, LLP**

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For defendant Legacy Medical Supplies, LLC:**SKOLNICK & JOYCE, P.A.**

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Also present:

David Millstein, Esquire

1 (1:00 p.m.)

2 P R O C E E D I N G S

3 I N O P E N C O U R T

4 (VIA ZoomGov VIDEO CONFERENCE)

5 THE COURT: Good afternoon, everyone. Can
6 everyone hear me?

7 We are here this afternoon for a motion hearing in
8 3M Company versus Legacy Medical Supplies, LLC, and others.
9 This is Civil File Number 20-1371.

10 I'll ask counsel to note their appearances for the
11 record, please, starting with 3M.

12 MR. PACK: Your Honor, this is Tom Pack from the
13 Maslon law firm on behalf of 3M.

14 MR. SKOLNICK: Good afternoon, Your Honor.
15 William Skolnick on behalf of Legacy Medical Supplies, LLC.

16 MR. MILLSTEIN: Good afternoon, Your Honor. David
17 Millstein on behalf of Carol Ann Korpi. We are specially
18 appearing. We've already -- we resolved the case and don't
19 have any opposition and stipulated to the motion. We're
20 just here informationally.

21 THE COURT: All right. And then we also have
22 Mr. Pentelovitch and Mr. Duffey also for 3M, if I'm correct
23 about that.

24 MR. PENTELOVITCH: That's correct, Your Honor.

25 MR. DUFFEY: Yes, Your Honor. Good morning.

1 THE COURT: All right. Thank you.

2 Let me start this way. I've read everything. I
3 understand that Ms. Korpi and Mr. Nelson have reached
4 consent judgments and I've reviewed those. When I say I've
5 reviewed everything, just to be clear, that's not just the
6 briefing, but that's if not every exhibit, most of them or,
7 you know, the vast majority of them, so I'm familiar with
8 the briefing and the record.

9 Who will be presenting on behalf of 3M?

10 MR. PACK: I will, Your Honor.

11 THE COURT: All right. Mr. Pack, let me ask you,
12 is there anything or any recent -- are there any recent
13 developments that I need to be aware of?

14 MR. PACK: Your Honor, I will say that about an
15 hour before this hearing we learned that Mr. Reboulet
16 retained counsel, and so I originally intended to argue this
17 as an unopposed motion and just point out a few particular
18 key facts that I think justify preliminary relief in this
19 matter against the remaining defendants, which are
20 Mr. Eckhardt, Legacy, and Mr. Reboulet, but I -- now
21 Mr. Reboulet and Legacy have counsel, and so that's the only
22 major recent development.

23 THE COURT: Okay. Mr. Skolnick, just so I'm
24 aware, you're not then just representing Legacy. You're
25 representing Mr. Reboulet as well?

1 MR. SKOLNICK: Good afternoon, Your Honor.

2 First of all, I want to apologize for not being in
3 a suit and tie, but I was retained a little more than an
4 hour ago and hadn't worn my suit and tie, as I didn't know I
5 was going to have a hearing today, so excuse my dress.

6 THE COURT: That's okay.

7 MR. SKOLNICK: Secondly, I do represent Legacy and
8 I filed a notice of appearance. I have not filed a notice
9 of appearance on behalf of Mr. Reboulet, and it is my
10 understanding from my review of the record that there is no
11 affidavit of service upon Mr. Reboulet.

12 MR. PACK: Your Honor, we did file an affidavit of
13 service on behalf of Mr. Reboulet yesterday and on behalf of
14 Legacy. They were served at the same time. Mr. Reboulet is
15 Legacy's registered agent.

16 THE COURT: I've got the docket up, Mr. Skolnick,
17 and I do see that those affidavits --

18 MR. SKOLNICK: I believe the affidavit of service
19 states that he was served with a summons and complaint, not
20 the TRO motion.

21 MR. PACK: My understanding --

22 MR. SKOLNICK: It was the other way around. I'm
23 sorry.

24 MR. PACK: -- with everything all at once,
25 including the briefing order, on July 2nd.

1 MR. SKOLNICK: I can only tell you what my brief
2 review of the record is, and my understanding is that the
3 affidavit of service -- I've now been corrected by my
4 partner that it was for the TRO motion, but not the summons
5 and complaint. That's all I could tell the Court at this
6 time. And therefore, we would take the position that there
7 isn't a basis to grant any relief as it relates to
8 Mr. Reboulet, Legacy has been served, and I'll address that
9 when it's appropriate.

10 THE COURT: Has Mr. Reboulet been served with the
11 summons and complaint?

12 MR. PACK: The only way Legacy would have been
13 served with the summons and complaint is if Mr. Reboulet was
14 served with the summons and complaint, and so I don't have
15 the affidavits of service in front of me. I can check, but
16 my understanding is that everyone has been served.

17 Furthermore, because Mr. Reboulet is Legacy's
18 principal, any relief awarded against Legacy would
19 necessarily enjoin him as well. So it's sort of -- I think
20 we have done everything correctly, but to the extent we
21 haven't, it's really a distinction without a difference from
22 a jurisdictional standpoint.

23 MR. SKOLNICK: Well, I disagree.

24 THE COURT: Mr. Skolnick, let me interrupt for
25 just a second if I could.

1 I'm looking at the affidavit of service which is
2 at docket entry number 10. That indicates that the summons
3 and complaint were served upon Legacy personally in Golden
4 Valley "by handing to and leaving with Joseph Nelson, Vice
5 President Operations ... a true and correct copy thereof."

6 MR. PACK: Your Honor, I could clear up a little
7 bit of that. When we filed the lawsuit, we were not sure
8 who the parties' principals were, and on the website
9 Mr. Nelson was indicated as I believe a chief operating
10 officer, and so we did serve him with a summons and
11 complaint. We understood that to be service on Legacy, but
12 also served a summons and complaint and TRO paperwork on
13 Mr. Reboulet personally as well to sort of make sure we had
14 done everything. We also have an outstanding request for
15 service with the Secretary of State, so we have tried to go
16 at it at all angles.

17 THE COURT: All right. Well, put it this way:

18 In looking through the docket, I don't see a
19 certificate or affidavit of service of process specifically
20 on Mr. Reboulet, and the service that is indicated upon the
21 defendant Legacy Medical Supplies, the LLC, it indicated --
22 or through someone other than Mr. Reboulet, specifically
23 Mr. Nelson. So unless somebody can point me in the
24 direction of an affidavit or certificate that establishes
25 service of process on Mr. Reboulet, I will conclude for

1 purposes of this hearing that he's not been served.

2 MR. PACK: Your Honor, I'm confident that we have
3 that certificate and I believe we filed it yesterday
4 morning, and I can point the Court at the conclusion of the
5 hearing to that, and if by some chance it was not filed, we
6 can get that filed, and I'm confident that we can resolve
7 this before you would need to issue an order.

8 THE COURT: Okay. Yes, the affidavit of service
9 that was filed with respect to Mr. Reboulet describes the
10 documents that were served upon him and the complaint is not
11 among them.

12 MR. PACK: Well, Your Honor, if that is the case,
13 it is a clerical error and we can get an updated affidavit
14 of service from our process server. Again, it was all
15 served as part and parcel of the same service on the evening
16 of July 2nd.

17 THE COURT: Understood. Oh, there. No, it does
18 say. It says "summons and complaint" right away, "Letter;
19 Summons and Complaint." Sorry. Trying to do these things
20 on the fly gets challenging at times, but it's important
21 that we get it right.

22 MR. PACK: You're right, Your Honor. And we
23 didn't --

24 THE COURT: This is at ECF Number 31. And I note
25 that Mr. Reboulet was served, this indicates, on July 3rd,

1 2020, 2:54 p.m. with the summons and complaint at 306
2 Trotters Court, Knightstown, Indiana.

3 Mr. Skolnick, any response to that? Any concerns
4 about that?

5 MR. SKOLNICK: It's my understanding that on
6 July 2nd some sheriff contacted Mr. Reboulet. Mr. Reboulet
7 drove and was handed a box of documents on behalf of Legacy.
8 So I expected to see an affidavit of service from the
9 sheriff on July 2nd. And I -- and that's why -- it's the
10 only information I have is that I -- I think Mr. Reboulet is
11 a resident of Florida. The 306 Trotters Court was the
12 address given for the entity. It is Mr. Reboulet's mother's
13 house, not his residence, and so I don't believe he was
14 served at that residence on that date with those documents.

15 THE COURT: Well, I've got an affidavit in front
16 of me that says that he was. I appreciate your concern or
17 your belief that he may not have been, but until I've got
18 something that's equivalent to an affidavit, I've got to go
19 with what I've got in the record here, and that's a sworn
20 affidavit by a process server that indicates or says
21 explicitly that he served the summons and complaint on
22 Mr. Reboulet personally at that address on July 3rd.

23 So, with that issue behind us, at least for
24 purposes of this hearing -- Mr. Skolnick, let me just ask
25 you. Maybe this makes the most sense in trying to structure

1 where we go from here.

2 Does Legacy intend to oppose the motion for a
3 preliminary injunction?

4 MR. SKOLNICK: Yes.

5 THE COURT: Okay. It's filed, no brief or any
6 pleadings in opposition to it, correct?

7 MR. SKOLNICK: It's my -- no, I have not filed
8 anything having just been retained and it's my understanding
9 no one else has submitted any papers in opposition.

10 THE COURT: Right. So just for purposes of a
11 clear record today, then Legacy's response or opposition
12 would be any argument that you make here today and that's
13 it, correct?

14 MR. SKOLNICK: That is correct.

15 THE COURT: Okay. Mr. Pack, since you're the
16 moving party, let's hear from you first here keeping in mind
17 again that I've read everything.

18 MR. PACK: Yes, Your Honor, and I'll keep it brief
19 because I don't think I need to cite chapter and verse of
20 the case law to you.

21 But 3M's filed over a dozen of these lawsuits
22 around the country because so many people are attempting to
23 profit from the COVID-19 pandemic, and it's 3M's position
24 that because there can be no harm to Defendants by issuing
25 the relief it seeks in the form of a proposed TRO order, it

1 should be issued because the order 3M seeks merely enjoins
2 illegal conduct.

3 You know, I'm sure the Court is aware that 3M
4 manufactures N95 respirators and is the world's largest
5 manufacturer of these respirators, and, you know, these are
6 a critical tool to protect healthcare workers, but because
7 no one foresaw the global pandemic, supply is severely
8 constrained. And in my own family I have physicians who are
9 having to reuse these single-use masks again and again
10 because there simply aren't enough of them. And healthcare
11 providers are desperate for these respirators and the
12 pandemic has created just the sort of black or gray market
13 for the resale of these respirators at enormous markups.
14 And while this is immoral, moreover it's illegal. And using
15 3M's trademarks, goodwill, and alleging connections to 3M
16 dilutes its trademarks and violates various deceptive trade
17 practices laws which are analyzed for purposes of a TRO and
18 a preliminary injunction under the same standard.

19 And that is exactly what the defendants in this
20 matter are attempting. Indeed, Mr. Reboulet, the apparent
21 principal of Legacy Medical Supplies, asked me in an email
22 earlier in this litigation when he was asked to waive
23 service and then failed to do so that he wanted to clear up
24 this, quote-unquote, misunderstanding apparently so Legacy
25 can continue to trade on 3M's name and goodwill to play

1 matchmaker between buyers and sellers of N95 respirators at
2 an enormous markup, and that email is particularly at
3 Exhibit 18 to the Duffey declaration.

4 And while I learned about an hour before this
5 hearing that Mr. Reboulet has retained counsel and is
6 interested in resolving the matter, we have no assurance
7 that Mr. Reboulet and Legacy will not go back to the
8 business model that they based the whole company on and are
9 therefore seeking preliminary relief from the Court.

10 And I do want to clear up, as a preliminary
11 matter, we have reached settlements, as we indicated, with
12 Mr. Nelson and Ms. Korpi, and to the extent the Court has no
13 concern with the consent judgments that we submitted
14 already, then we don't seek preliminary relief against them;
15 however, we do seek that preliminary relief if the Court has
16 any issue with or does not expect to issue the consent
17 judgments that we filed.

18 Substantively, Your Honor, I don't think this is a
19 close case at all. The Court understands the law. Six
20 other TROs have been issued in similar cases and here the
21 facts are at least as egregious, if not more egregious, than
22 those other cases. And I want to highlight just three
23 particular facts which I think demonstrate the harm 3M is
24 experiencing with regard to its trademarks, brand and
25 goodwill, and then I don't need to explain how the law

1 justifies them. I'm sure the Court is very familiar with
2 that.

3 First, Mr. Reboulet and Ms. Korpi claimed a
4 relationship with Nick Gangestad, 3M's CFO. They made this
5 claim to an attorney here in Minnesota who they sought to
6 retain in connection with what we view as fraud, and that
7 attorney was sufficiently concerned with what he heard that
8 he waived confidentiality through ethical exceptions to that
9 rule, contacted the FBI, and they passed on that information
10 to 3M. That information is contained in the Van Heyst
11 declaration. Legacy also claims connections to 3M's
12 attorneys in its marketing documentation and on its website.
13 So, every time Legacy is contacting a new potential buyer
14 for 3M N95 respirators, it's alleging a connection with 3M,
15 and that is a dilution of 3M's goodwill and trademarks.

16 The second fact, briefly, Your Honor, is that
17 Mr. Reboulet himself called 3M's customer service line
18 seeking help in vetting, quote-unquote, brokers in order to
19 perpetrate this fraud. He said he had \$160 billion in
20 escrow for the purchase of 47 billion respirators for 183
21 hospitals, which represents, if you average that out, about
22 a 250 percent markup over 3M's list price, which has not
23 increased since the beginning of the pandemic. He didn't
24 want to speak to the fraud hotline, but instead sought to
25 speak to someone in production and stock availability.

1 Importantly, that's several decades' worth of 3M's
2 production capacity that Mr. Reboulet claimed to have access
3 to, and the notion that Mr. Reboulet would represent
4 availability to hospitals during a pandemic at a markup is,
5 frankly, reprehensible. And this is all detailed in the
6 Gruber declaration which is attached to our TRO briefing.
7 There's just no way Legacy has those respirators, but they
8 continue to in a third instance market access to those
9 respirators.

10 And the third instance is when Legacy sought to
11 sell 250 million respirators to an entity called Safe Harbor
12 for a large markup, which would then probably resell these
13 respirators to other entities at an even larger markup.
14 This is detailed in the Smith declaration. Legacy certainly
15 did not have access to what amounts to five months of 3M's
16 now increased respirator capacity.

17 And these three instances, which are what 3M has
18 uncovered from its investigation to date alone, clearly
19 implicate an attempt to use 3M's brand, reputation and
20 goodwill to deceive consumers during a pandemic. Even if
21 Mr. Reboulet had legitimate access to 3M respirators, it
22 would not have come through -- pardon me. If Mr. Reboulet
23 had access to 3M respirators at all, it would not have come
24 through legitimate channels, and he absolutely has no access
25 to 3M executives and attorneys in connection with this

1 business. So, Legacy's attempt to profit off the
2 desperation of a pandemic is awful.

3 I don't need to belabor the standard and relate
4 the case law for you, although I'm happy to answer any
5 questions the Court has about how this case fits into
6 existing law.

7 I do want to focus on one area, though, which is
8 the scope of their requested relief. The proposed TRO
9 order, along with a proposed preliminary injunction order,
10 along with the consent judgments that we have filed in this
11 case simply enjoins the use of 3M's marks, and it enjoins
12 false statements and enjoins claims of affiliation with 3M.
13 I understand Mr. Skolnick was recently retained, but I just
14 don't see any possible argument against enjoining illegal
15 conduct. The standard for preliminary relief is met and
16 there's no harm to Legacy or Mr. Reboulet or Mr. Eckhardt,
17 and there just can't be any harm from being required to act
18 lawfully.

19 So, our other arguments and citation to law are
20 contained in our brief and I'm happy to answer any questions
21 the Court has unless you -- if you don't have any, I'll
22 stop.

23 THE COURT: I have questions regarding the
24 proposed order for a preliminary injunction.

25 MR. PACK: Yes, Your Honor.

1 THE COURT: If I could sort of run through those
2 if I could.

3 First, the order would enjoin not just the
4 defendants, but all persons and entities, business
5 organizations and the like, quote, "in active concert and
6 participation with the defendants," and I'm wondering if
7 that "active concert and participation" is a term of art,
8 and if it is, what does it mean?

9 MR. PACK: Your Honor, I don't think it's a term
10 of art. I think it's meant to encompass sort of the Doe
11 defendant idea of affiliated entities.

12 For example, Mr. Reboulet has, we understand from
13 the public record, another entity, a holding company, for --
14 his entity is called Legacy. I could find the exact entity,
15 but the purpose there is to ensure that he doesn't simply
16 change up the LLC and then proceed with the conduct.

17 THE COURT: All right. I read that and sort of
18 thought of a number of hypotheticals of folks who might be
19 working with Legacy.

20 MR. PACK: Another example, Your Honor, that comes
21 to mind is we understand Ms. Korpi has a consulting company
22 she works through, and so we wouldn't want to see the same
23 conduct occur through that LLC.

24 THE COURT: I'm fine with 3M not posting a bond if
25 I enter the injunction. In looking through other orders and

1 in looking through Eighth Circuit law, my understanding of
2 that is I need to justify that decision beyond just
3 equitable powers and discretion. It seems to me that one
4 legal reason I'm permitted not to require a plaintiff in
5 this situation to post a bond is its financial condition.
6 Is that your understanding as well? I saw Judge Prescott
7 did that in her order.

8 MR. PACK: Yes, Your Honor, and we're -- that's
9 fine. I mean, 3M can obviously pay any damages that might
10 result, even though it's hard to conceive of any damages
11 resulting from this injunction.

12 THE COURT: Okay. And then with regard to
13 paragraph 4 of the proposed order, it required the
14 defendants to within seven days essentially report
15 compliance, and that's not something I'm accustomed to
16 seeing in a preliminary injunction. I mean, either they're
17 in compliance or not, and if they're not in compliance, you
18 come back and you ask for contempt if the injunction is
19 entered.

20 MR. PACK: Oh, at the very end?

21 THE COURT: Yes, paragraph 4, and then I'm going
22 to have a question about paragraph 5 too, but I guess I'm
23 not -- I haven't seen a paragraph like paragraph 4 entered
24 before and I'm wondering what particular purpose it would
25 serve here beyond just entry of the preliminary injunction

1 itself, right? If they're not in compliance, they're not in
2 compliance, you come to me and you tell me that and we've
3 got a possible contempt issue on our hands.

4 MR. PACK: Your Honor, I think the purpose from
5 3M's perspective is that a lot of this is happening outside
6 of the public view and it will be difficult for 3M to --
7 particularly if Defendants are trying to hide it -- to
8 ascertain whether or not they are complying, and so we would
9 ask that there be an affirmative requirement that they come
10 back and confirm that they're complying. So it just seems
11 very easy for us to imagine scenarios in which they're not
12 complying, but we can't tell until another fraud hotline tip
13 hits the FBI's telephone.

14 THE COURT: Among the form orders that -- sorry,
15 not form -- entered orders that you sent to me, has any
16 other judge included that term in one of the other orders?

17 MR. PACK: I'm not aware of any, Your Honor.

18 THE COURT: Okay. The last paragraph says that I
19 retain jurisdiction to hear and determine all matters. I
20 don't think that paragraph is necessary since the case isn't
21 over with. I get that it's necessary with respect to the
22 consent decrees, but if I'm entering a preliminary
23 injunction, this case is still ongoing. It's not necessary,
24 I don't think, to include a sentence that says I retain
25 jurisdiction when the case is in fact still pending. Does

1 that make sense or am I missing something there?

2 MR. PACK: No, Your Honor, that doesn't make sense
3 to us.

4 THE COURT: Okay. So I'll take paragraph 5 out
5 then if the order is entered. I'll think about paragraph 4
6 again if the preliminary injunction is entered.

7 All right. Anything further, Mr. Peck?

8 MR. PECK: Yes. I had one correction to a
9 statement about "active concert or participation" being a
10 term of art. It's actually contained in Rule 65. I
11 misspoke earlier and I apologize for that. The order
12 binds -- and it's Rule 65(d)(2)(C). An order can bind other
13 people who are in active concert or participation with
14 anyone described in the order, and I envision that including
15 the other LLCs, but it is a legal term as well.

16 THE COURT: Great. All right.

17 Mr. Skolnick, let's go to you.

18 MR. SKOLNICK: Well, based on my great knowledge
19 of this case that I have acquired in the last hour and a
20 half, there were a couple things that did strike me.

21 Number one, Legacy never said they were a
22 distributor of 3M products.

23 Number two, there is no evidence submitted that
24 Legacy put 3M's mark on any products.

25 MR. PACK: I could address both of those, Your

1 Honor, if you'd like.

2 THE COURT: No, let's wait till Mr. Skolnick's
3 done.

4 MR. PACK: I apologize.

5 MR. SKOLNICK: And in fact, I don't believe
6 there's any evidence that they sold any 3M product or
7 claimed to sell any 3M product that has actually been
8 consummated.

9 So, when you're looking at this, we have -- you
10 know, Mr. Pack mentioned this affidavit from this unknown
11 lawyer, which is hearsay. It's in the Van Heyst affidavit.
12 And the fact that they've been successful against others
13 based on those facts in those other cases has no bearing
14 here. We do have Legacy, who was attempting to broker and
15 help match buyers and sellers. They went through and
16 contacted, it's my understanding, licensed and authorized 3M
17 distributors. So it wasn't that Legacy was out there
18 saying, "We're a 3M distributor." They didn't. That's my
19 understanding.

20 And based on the balance of harms, what they have
21 asked is to put my client out of business, whereas the harm
22 to 3M, although they say it's irreparable, the truth of the
23 matter is that 3M will not suffer any harm if we allow this
24 case to proceed without a preliminary injunction. As they
25 say, we have enough -- 3M is big enough and financially

1 secure enough they don't need to post a bond. My client has
2 sold none, not one item that they have come forward with,
3 that was either a 3M product or a fake 3M product. So when
4 you weigh that situation, I believe it does weigh in favor
5 of my client.

6 Now, when I was first contacted I did contact
7 Mr. Pack, and I was aware this morning that Ms. Korpi and
8 Mr. Nelson had reached consent judgments and I have those
9 available for my review and I've reviewed them. My
10 understanding is there's a settlement agreement between
11 those parties and I asked to cut to the quick and say, "Show
12 them to me. Maybe we can eliminate the need for this
13 hearing," and Mr. Pack said he was busy preparing for the
14 hearing, which I understand. So my plan and where we go
15 from here is to obviously explore that avenue of is there a
16 resolution that can be reached before we expend a lot of the
17 Court's and everyone else's resources.

18 And that would be, Your Honor, what I would
19 propose happen. That's it. I've not submitted anything and
20 I don't have anything more to add at the moment.

21 THE COURT: Thank you, Mr. Skolnick.

22 Mr. Pack?

23 MR. PACK: Yes, Your Honor.

24 Well, first of all, Legacy did represent to an
25 intermediary in an attempted purchase between Legacy and

1 Safe Harbor that it was an authorized distributor, and that
2 is detailed in the declaration of Stuart Tseng, T-S-E-N-G,
3 Exhibit 1 at page 5, lines 11 through 16.

4 Second, Mr. Skolnick said there's no evidence that
5 Legacy ever used 3M's marks. Well, the letters "3" and "M"
6 are a registered trademark for 3M, and so those were used on
7 its website, on the letters of intent, on the proposed
8 agreements that we submitted, and in a number of informal
9 statements in connection with the sales we have detailed.

10 Finally, Mr. Skolnick's point about how Legacy has
11 never actually sold a mask, I mean, I think initially it's
12 because Legacy has never had access to any masks, but
13 legally that's sort of beside the point. When there is
14 trademark infringement in the Eighth Circuit, there is a
15 presumption of irreparable harm and infringement only
16 requires an offer for sale. It doesn't require a sale. And
17 so Legacy's attempt to sell 3M products using 3M's name
18 creates a presumption of irreparable harm that tips the
19 balance in 3M's favor.

20 And finally, I was not able to provide and I'm
21 still not able to provide to Mr. Skolnick the confidential
22 settlement agreement between Ms. Korpi and 3M and Mr. Nelson
23 and 3M, but I did outline the broad terms of it, and I
24 think, you know, if the Court enters the TRO, we're happy to
25 explore resolution. I also noted that I wasn't authorized

1 to make any offer of any specific terms on the fly an hour
2 before the TRO hearing.

3 THE COURT: Thank you.

4 Mr. Skolnick, anything further? I'll give you the
5 last word here if you like.

6 MR. SKOLNICK: Thank you, Your Honor.

7 Number one, the transcript that he's talking about
8 is from a third party saying that something was said by my
9 client. It's hearsay, it's unsupported. There's nothing
10 that my client published that said where they claim to be a
11 3M distributor.

12 The second item is, Mr. Pack keeps asking the
13 Court and just asked the Court about a TRO. My client is
14 not arguing that because of my recent retention. If the
15 Court were to order a TRO and give us some time to
16 investigate this matter, we could come back. It's the
17 preliminary hearing and injunction that Legacy is objecting
18 to.

19 THE COURT: Help me out there. What do you see as
20 the dispositive difference between entering a TRO and a
21 preliminary injunction, just the 10-day duration or 14-day
22 duration of a TRO?

23 MR. SKOLNICK: That would give counsel, myself, an
24 opportunity and my client an opportunity to do a
25 thorough -- well, to do an investigation as to whether or

1 not some of these allegations are true and whether or not it
2 will bear on what happens at the conclusion. The
3 preliminary injunction says this stops them throughout the
4 pendency of the case. And so it would allow us to put some
5 evidence before the Court when we go from a TRO to a
6 preliminary injunction, whereas right now, obviously, my
7 client not having counsel did not submit anything. We would
8 like the opportunity to gather some evidence, present it to
9 the Court, let the Court decide whether a preliminary
10 injunction after it sees some of the evidence is
11 appropriate.

12 Thank you.

13 THE COURT: Mr. Pack, what do you say about that?

14 MR. PACK: Your Honor, we still would like a
15 preliminary injunction, but I assumed that would be as
16 indicated I believe in our proposed order a later thing as
17 well. And so it seems like there's no longer any question
18 about the TRO and we ask that the Court set a briefing
19 schedule for the preliminary injunction and that we will
20 continue to pursue its issuance on that briefing schedule as
21 indicated by our proposed TRO.

22 Your Honor, I also would like an expedited
23 discovery schedule. If we're going to engage in active
24 attempts to figure out what's actually happening here
25 between the parties, we would like not only to have

1 Mr. Skolnick submit evidence that he has, but also produce
2 evidence to 3M that is going to be responsive to any
3 discovery request that would be issued in this matter.

4 THE COURT: Well, all right. I hadn't really
5 thought about -- hadn't really thought about the distinction
6 between a TRO and a preliminary injunction meaning very much
7 here given the way this thing had been set up prior to the
8 hearing, or presented, I should say.

9 But since the motion for a temporary restraining
10 order -- Mr. Skolnick, what I hear you saying is your
11 clients are not opposed to the entry of a temporary
12 restraining order.

13 MR. SKOLNICK: That is correct.

14 THE COURT: Okay. Well, that makes things easy
15 then. I will -- at least for the time being and for me. I
16 don't know how much easier it's going to make it for you
17 all, but it makes it easier for me.

18 I will grant the motion for a temporary
19 restraining order. I'll enter it pursuant to Rule 65. I'll
20 order that that temporary restraining expire not later than
21 14 days from its entry, which will be, just to give
22 everybody a heads-up on this, July 28th.

23 I take it you all then will be in discussions
24 between now and then about what makes the most sense in
25 terms of where the case goes from there, and I can imagine

1 that going a number of different directions. You may decide
2 that a resolution makes the most sense, you may decide that
3 expedited discovery makes the most sense, but let's cross
4 that bridge when we come to it.

5 As part of the order, what I'll do is also ask the
6 parties to give me a status update on -- do you want Friday
7 the 24th or Monday the 27th?

8 MR. SKOLNICK: Friday the 24th would work better
9 for me, Your Honor.

10 THE COURT: Mr. Pack?

11 MR. PACK: That would work for us, Your Honor.
12 Would you consider any form of expedited discovery in the
13 next 14 days as we attempt to get to the bottom of what was
14 actually done and what was said?

15 THE COURT: Not today. I'm going to leave that up
16 to you all to either agree to or not. I mean, it seems to
17 me that the costs associated with expedited discovery are a
18 reason to reach a resolution. So I'm not going to order
19 that today, but if we get to the 28th and we don't have
20 that, and if the briefing on the motion for a preliminary
21 injunction suggests that something like that is helpful or
22 might be helpful, then I'd order it then. Frankly, on the
23 evidence that's presented now, it seems to me there isn't a
24 lot more that's necessary from 3M's side.

25 All right. Just to close the loop, I'll also say

1 for purposes of the record that I find the ***Dataphase***
2 elements here for purposes of a temporary restraining order
3 are satisfied. I think that 3M's established a likelihood
4 of success on the merits. I think that it's shown
5 irreparable harm. I think it would be guesswork and
6 speculative as to try to determine a damages amount relative
7 to the alleged conduct on the record that's created here
8 with respect to this motion. I think the balance of harms
9 weighs in favor of 3M.

10 Mr. Skolnick, I appreciate your arguments and the
11 fact that you were retained just an hour before the hearing.
12 The one thing I would observe about balance of harms is
13 this:

14 Both the temporary restraining order and the
15 preliminary injunction order that have been proposed would
16 restrain Legacy from selling 3M masks and engaging in the
17 distribution, advertising, and promotion of 3M masks, which
18 I gather Legacy is saying it's something it's not doing or
19 doesn't want to do, certainly hasn't done successfully, and
20 the rest of the order really just relates to prohibiting
21 false representations and other conduct that would seem to
22 violate the law. So I don't see as how that kind of
23 temporary restraining order or preliminary injunction would
24 put your client out of business, so I find the balance of
25 the harms weighs in favor of 3M.

1 And certainly I think if you're balancing public
2 interest here, it also weighs in favor of 3M on the record
3 as it stands now given profiteering and opportunistic sorts
4 of allegations and related evidence that have been submitted
5 in the era of a pandemic.

6 So, I will enter an order today granting the
7 motion for a temporary restraining order. It will not be
8 exactly the same as the order 3M submitted. It will contain
9 the changes to delete paragraphs 4 and 5 of the proposed
10 order and we'll make a couple of other tweaks, but that's
11 about it.

12 Mr. Pack, any questions?

13 MR. PACK: Yes, Your Honor. Did you intend to
14 enter the consent judgments we submitted?

15 THE COURT: Oh, I'm sorry. Yes, and I find that
16 those are both reasonable and supported by the record as
17 well, so I have no questions about that and certainly agree
18 that those are substantively and procedurally fair,
19 reasonable, and consistent with the governing law as well,
20 so I will enter those as well.

21 MR. PACK: Thank you, Your Honor.

22 THE COURT: I will dismiss those two defendants
23 from the case then, though I will retain jurisdiction over
24 those two separate consent decrees.

25 MR. PACK: Thank you.

1 THE COURT: Anything further, Mr. Pack?

2 MR. PACK: Not from me, Your Honor.

3 THE COURT: Mr. Skolnick, anything further?

4 MR. SKOLNICK: No, Your Honor.

5 THE COURT: All right. I will look forward to
6 hearing from everybody by the close of business, 5:00 p.m.,
7 on Friday, July 24th as to where everybody's at and the need
8 for further proceedings relative to the motion for a
9 preliminary injunction.

10 Thanks, everyone. We'll stand adjourned.

11 MR. PACK: Thank you.

12 (Proceedings concluded at 1:46 p.m.)

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C E R T I F I C A T E

I, **TIMOTHY J. WILLETTE**, Official Court Reporter
for the United States District Court, do hereby
certify that the foregoing pages are a true and
accurate transcription of my shorthand notes,
taken in the aforementioned matter, to the best
of my skill and ability.

/s/ Timothy J. Willette

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